

AMENDED AND RESTATED ESCROW AGREEMENT

This Amended and Restated Escrow Agreement is executed this _____ day of _____, 2001, among the United States Department of the Interior (“Interior”) and the Colorado Water Resources and Power Development Authority (the “Authority”) (jointly known as the “Depositors”), and the State Treasurer of the State of Colorado (the “Treasurer”).

WHEREAS, the United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, the Colorado Water Resources and Power Development Authority, the Animas La Plata Water Conservancy District, the New Mexico Interstate Stream Commission, the San Juan Water Commission, and Montezuma County, Colorado, entered into an Agreement in Principle concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas La Plata Project Cost Sharing” (“Cost Sharing Agreement”) on June 30, 1986; and

WHEREAS, the Cost Sharing Agreement provided for the establishment of an escrow account upon the occurrence of certain conditions precedent, to be funded by the Authority and drawn upon by the Secretary of Interior (“Secretary”) to defray a portion of the construction costs of certain facilities of the Animas La Plata Project, in fulfillment of the State of Colorado’s obligations under the Cost Sharing Agreement; and

WHEREAS, on November 10, 1989, the United States and the Authority entered into an Agreement and Instructions for Administering Escrow Account, and the United States, the Authority, and the Colorado State Treasurer entered into an Escrow Agreement (collectively, the “Escrow Agreements”), both agreements relating to the Escrow Account for the State of Colorado’s cost-sharing participation in the Animas La Plata Project; and

WHEREAS, pursuant to the Escrow Agreements, the sum of \$29,948,432 was duly placed in escrow with the Colorado State Treasurer in order to fulfill the State of Colorado’s obligations pursuant to the Cost Sharing Agreement; and

WHEREAS, as a result of investment returns and interest, the Escrow Account has increased to \$42,400,400; and

WHEREAS, the construction of the Animas La Plata Project has not occurred in the manner contemplated by the Cost Sharing Agreement and the Escrow Agreements, and Congress has provided new authority in Public Law 106-554 (the “2000 Amendments”) to construct a modified Animas La Plata Project in order to effectuate the Colorado Ute Indian Water Rights Settlement; and

WHEREAS, the 2000 Amendments eliminate the requirement for cost sharing in the construction of the Animas La Plata Project; and

WHEREAS, the 2000 Amendments provide for the construction of Project facilities to deliver certain municipal and industrial water allocated to the Animas La Plata Water Conservancy District, a political subdivision of the State of Colorado, conditioned, however, upon payment of the water capital obligations attributable to such allocations prior to initiation of construction of the Project; and

WHEREAS, the Authority is authorized by §§37-95-101, et. seq., C.R.S., and by Resolution of the General Assembly of the State of Colorado, Senate Joint Resolution 6, 1982 Session Laws 702, to consider financing or participating in the financing of the Animas La Plata Project including contracting with any person or governmental agency for the construction and/or the sale of the output of the Animas La Plata Project; and

WHEREAS, the Authority and the Animas La Plata Water Conservancy District have entered into an Agreement in Principle dated _____ pursuant to which the Authority has acquired by assignment from the Animas La Plata Water Conservancy District its interest in the 2,600 acre-feet of municipal and industrial depletions allocated to the Animas La Plata Water Conservancy District by the 2000 Amendments, and intends to fund the reimbursable share of construction costs allocated to such water, and to market and sell such water in conjunction with the Animas La Plata Water Conservancy District; and

WHEREAS, Interior and the Authority have entered into an Amended and Restated Agreement and Instructions for Administering Escrow Account pursuant to which they have agreed to amendments to the Escrow Account and its administration in order to address the changes to the Animas-La Plata Project described above; and

WHEREAS, pursuant to the Escrow Agreement between the parties dated November 10, 1989, the Agreement may be amended by a written instrument executed by the Depositors and the Treasurer, and the Treasurer's consent to amend the Agreement shall not be unreasonably withheld when it is requested by the Depositors;

NOW THEREFORE, the parties hereto agree as follows:

1. Adjustment of Escrow Deposit: The sum of \$_____ currently on deposit in the escrow account shall be and hereby is released from the existing escrow account and shall be delivered to the Authority. The sum of _____ (comprising the reimbursable share of the cost of construction of Animas-La Plata Project for 2,600 acre-feet of municipal and industrial depletions allocated by the 2000 Amendments to the Animas-La Plata Water Conservancy District) shall remain in the escrow account. The foregoing sum shall hereinafter be referred to as the "Escrowed Property."

2. Instructions: The Treasurer shall hold and disperse the Escrowed Property in accordance with the instructions set forth on the attached Schedule A, which is incorporated into and made a part of this Agreement by this reference. To assist the Treasurer in performing his function, the Authority will provide to the Treasurer prior to the beginning of each fiscal year an estimate of the maximum allowable draw by Interior on the account during that fiscal year. Such estimates may be changed from time to time. The Treasurer will be informed of changes.

3. Investment of Funds: Any cash deposited pursuant to the terms of this Agreement shall be invested by the Treasurer, in accordance with the written direction of the Authority. Such investments may be in any investment authorized pursuant to Schedule A. The Authority shall provide the Treasurer with an overall investment plan for management of the funds. Such plan may be changed from time to time at the sole discretion of the Authority, and the Authority's specific investment decisions may vary from the plan. The Treasurer will provide the Depositors a monthly statement of the account showing cash on deposit and investments. The statement will be issued on the regular schedule for such statements of the Treasurer's office.

4. Late Payment or Performance: Subject to Schedule A, which shall control in case of conflict, the Treasurer may accept any payment or performance called for under this Agreement after the date such payment or performance is due, unless subsequent to such a date, but prior to the actual date of payment or performance, the Treasurer is instructed in writing by a Depositor not to accept such payment or performance.

5. Waivers: The failure of any party to the Agreement at any time or times to require performance to any provision under this Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to the Agreement of any such condition or breach of any term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or a breach of any other term, covenant, representation or warranty contained in this Agreement.

6. Termination: Termination shall be in accordance with Schedule A. In addition to and notwithstanding the provisions of Schedule A, the parties hereby agree that the Treasurer shall upon receipt of the certification of the Attorney General of the State of Colorado and a Resolution duly passed by the Board of Directors of the Colorado Water Resources and Power Development Authority, delivered by certified mail to the Treasurer with copies to the Depositors, that the Amended Agreement and Instructions for Administering Escrow Account between the United States Department of the Interior and the Colorado Water Resources and Power Development Authority, Animas-La Plata Project Colorado and New Mexico (Schedule A) is terminated, return all remaining Escrowed Property, including any interest or earnings thereon, to the Colorado Water Resources and Power Development Authority or its successors or assigns.

7. Extension of Benefits: All of the terms of this Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by the respective successors and assigns of all of the parties to the Agreement.

8. Counterparts: This Agreement may be executed in several counterparts, each of which when executed shall be deemed to an original, and all of which counterparts shall together constitute one and the same instrument.

9. Amendment: This Amendment may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Depositors and the Treasurer. The Treasurer shall not unreasonably withhold consent to amend when it is requested by the Depositors.

10. Governing Law: This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado and the United States.

11. Notices: All notices, requests, demands, or other communications required under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or mailed by certified mail with return receipt requested and postage prepaid. If any notice is mailed, it shall be deemed given upon the date such notice is deposited in the United States mail. If any notice is personally delivered, it shall be deemed given upon the date of such delivery.

If notice is given to the Depositors it shall be addressed to:

Executive Director
Colorado Water Resources and Power Development Authority
1580 Logan Street, Suite 620
Denver, Colorado 80203-1943

Regional Director
Department of the Interior, Bureau of Reclamation
P.O. Box 11568
Salt Lake City, Utah 84147

If notice is given to the Treasurer it shall be addressed to:

The State Treasurer of the State of Colorado
140 State Capitol
Denver, Colorado 80203

Any change in the foregoing addresses shall be in writing and delivered to the other parties of this Agreement.

12. The Entire Agreement: This Amendment and Restatement of Escrow Agreement and the attached Schedule A sets forth the entire agreement and understanding of the parties to this Agreement.

IN WITNESS WHEREOF, the parties of this Agreement have each caused this Agreement to be duly executed as of the date and year first above written.

**THE COLORADO WATER RESOURCES AND
POWER DEVELOPMENT AUTHORITY**

By: _____
Chairman

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ATTEST:

Secretary

**THE UNITED STATES DEPARTMENT OF THE
INTERIOR**

By: _____
Regional Director, Bureau of Reclamation

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STATE TREASURER, STATE OF COLORADO

By: _____

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**AMENDED AND RESTATED AGREEMENT AND
AMENDED AND RESTATED INSTRUCTIONS FOR
ADMINISTRATING ESCROW ACCOUNT BETWEEN
THE UNITED STATES DEPARTMENT OF THE INTERIOR
AND THE COLORADO WATER RESOURCES AND POWER
DEVELOPMENT AUTHORITY ANIMAS LA PLATA PROJECT
COLORADO/NEW MEXICO**

This Amended and Restated Agreement is entered into this _____ day of _____, 2001, among the United States Department of the Interior (hereinafter "Interior") and the Colorado Water Resources and Power Development Authority (hereinafter "Authority").

WHEREAS, the United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, the Colorado Water Resources and Power Development Authority, the Animas La Plata Water Conservancy District, the New Mexico Interstate Stream Commission, the San Juan Water Commission, and Montezuma County, Colorado, entered into an Agreement in Principle concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas La Plata Project Cost Sharing" ("Cost Sharing Agreement") on June 30, 1986; and

WHEREAS, the Cost Sharing Agreement provided for the establishment of an escrow account upon the occurrence of certain conditions precedent, to be funded by the Authority and drawn upon by the Secretary of Interior ("Secretary") to defray a portion of the construction costs of certain facilities of the Animas La Plata Project, in fulfillment of the State of Colorado's obligations under the Cost Sharing Agreement; and

WHEREAS, on November 10, 1989, the United States and the Authority entered into an Agreement and Instructions for Administering Escrow Account, and the United States, the Authority, and the Colorado State Treasurer entered into an Escrow Agreement (collectively, the "Escrow Agreements"), both agreements relating to the Escrow Account for the State of Colorado's cost-sharing participation in the Animas La Plata Project; and

WHEREAS, pursuant to the Escrow Agreements, the sum of \$29,948,432 was duly placed in escrow with the Colorado State Treasurer in order to fulfill the State of Colorado's obligations pursuant to the Cost Sharing Agreement; and

WHEREAS, as a result of investment returns and interest, the Escrow Account has increased to \$42,400,4000; and

WHEREAS, the construction of the Animas La Plata Project has not occurred in the manner contemplated by the Cost Sharing Agreement and the Escrow Agreements, and Congress has provided new authority in Public Law 106-554 (the "2000 Amendments") to construct a modified Animas La Plata Project in order to effectuate the Colorado Ute Indian Water Rights Settlement; and

WHEREAS, the 2000 Amendments eliminate the requirement for cost sharing in the construction of the Animas La Plata Project by the State of Colorado; and

WHEREAS, the 2000 Amendments provide for the construction of Project facilities to deliver certain municipal and industrial water allocations to the Animas La Plata Water Conservancy District, a political subdivision of the State of Colorado, conditioned, however, upon payment of the water capital obligations attributable to such allocations prior to initiation of construction of the Project; and

WHEREAS, the Authority is authorized by §§37-95-101, et. seq., C.R.S., and by Resolution of the General Assembly of the State of Colorado, Senate Joint Resolution 6, 1982 Session Laws 702, to consider financing or participating in the financing of the Animas La Plata Project including contracting with any person or governmental agency for the construction and/or the sale of the output of the Animas La Plata Project; and

WHEREAS, the Authority and the Animas La Plata Water Conservancy District have entered into an Agreement dated _____ pursuant to which the Authority has acquired by assignment from the Animas La Plata Water Conservancy District its interest in the 2,600 acre-feet of municipal and industrial depletions allocated to the Animas La Plata Water Conservancy District by the 2000 Amendments, and intends to fund the reimbursable share of construction costs allocated to such water, and to market and sell such water in conjunction with the Animas La Plata Water Conservancy District; and

WHEREAS, the Secretary of the Interior is authorized, through the Bureau of Reclamation, by Federal Reclamation Law and the 2000 Amendments to enter into this Agreement in order to receive payment of the reimbursable share of construction costs of the Animas La Plata Project properly assigned to the municipal and industrial water allocation for the Animas La Plata Water Conservancy District under the 2000 Amendments;

NOW THEREFORE, the parties hereto agree as follows:

1. Adjustment of Escrow Account. Within 30 days of the execution of this Agreement the sum of \$_____ will be released from the existing Escrow Account and delivered to the Authority. The sum of \$_____ (comprising the reimbursable share of the cost of construction of the Animas La Plata Project attributable to the 2,600 acre-feet of municipal and industrial depletions allocated to the Animas La Plata Water Conservancy District by the 2000 Amendments) shall remain in the Escrow Account. At the option of the Authority, the funds remaining in the Escrow Account may consist of any one or more of the following: (a) cash; (b) funds in the Treasurer's Investment Pool of the State Treasurer of the State of Colorado; (c) bonds or other interest bearing obligations of the United States government; (d) direct obligations of federal agencies that are backed by the full faith and credit of the United States; (e) direct obligations of federal agencies that are rated in the

highest rating category by one or more nationally recognized organizations that regularly rates such obligations; (f) bonds that are a direct obligation of the State of Colorado; (g) bank certificates of deposit, money market accounts, or other cash equivalent instruments or investments; and/or (h) such other investments as the Authority has previously authorized for funds in the Escrow Account.

2. Escrow Instructions. The escrow agent shall hold and disburse funds from the Escrow Account pursuant to the instructions set forth herein.

3. Fund Investments. The Authority shall have the exclusive right to direct investment of the funds in the Escrow Account, subject to the limitations of this paragraph. In exercising this right, the Authority may delegate it to the Escrow Agent. Commencing in fiscal year 2002 and during each of the next five fiscal years, an amount equivalent to not less than ___% of the estimated construction costs to be incurred during that year for construction of the facilities of the Animas La Plata Project described in Section 6(a)(1)(A) of the Colorado Ute Indian Water Rights Settlement Act, Public Law 100-585, as amended by the 2000 Amendments shall be maintained negotiable and carry no restrictions on marketability or liquidity. Commencing in the seventh fiscal year after fiscal year 2002, all funds remaining in the Escrow Account shall be maintained negotiable and carry no restrictions on marketability or liquidity. "Construction costs" shall be limited to those attributable to the Project facilities and shall have the same meaning as attributed to it by the United States Congress in Congressional Acts in which funds are appropriated for the Animas La Plata Project. For purposes of this Agreement, the fiscal year shall commence October 1st and end on September 30th. The Escrow Agent shall credit to the Escrow Account all interest on investments as it is earned.

4. Disbursement of Escrow Funds. Interior shall have the right to withdraw funds from the Escrow Account in accordance with the terms of this Agreement. No funds may be withdrawn from the account on behalf of Interior until the Authority informs the Escrow Agent that each and all of the following prerequisites has been satisfied: (a) the United States Congress has appropriated funds to initiate construction of the Animas La Plata Project; (b) any and all additional legal prerequisites to the commencement of construction have been satisfied; and (c) commencement of construction has occurred. It is the intent of the parties to match advances from the Escrow Account with actual construction costs for the Project to the extent possible. To accomplish this, Interior shall provide the Authority and the Escrow Agent with its annual construction schedule no later than ____ of each year. Disbursements totaling ___% **[our % share of total costs, + the percentage of our % share that is "sunk" costs; or our percentage of total costs, plus the percentage of total costs represented by our share of "sunk" costs divided by the number of quarters of construction anticipated (if 8 years, then 32)]** of the estimated construction costs for the Ridges Basin Dam, Durango Pumping Plant, Ridges Basin Inlet Conduit, and related facilities set forth on such schedule for the quarters beginning January 1, April 1, July 1, and October 1 (except as adjusted pursuant to Paragraph 5(a) below) shall be made to Interior ten days prior to the beginning of the relevant quarter. The Escrow Agent will insure that funds are available for such disbursements based upon the construction schedule.

The Escrow Agent shall not allow in any one fiscal year the withdrawal of funds in excess of ____% of the estimated construction costs of the United States during that fiscal year for construction of the Project as described in Section 6(a)(1)(A) of the Colorado Ute Indian Water Rights Settlement Act as amended by the 2000 Amendments, as set forth in the annual construction schedule provided to the Authority and Escrow Agent. That schedule may be amended at any time by mutual consent of the parties to reflect changing circumstances. Any such amendment shall be furnished to the Escrow Agent.

5. Reports and Adjustment of Disbursements.

(A) Interior shall prepare and furnish to the Authority and to the Escrow Agent annual reports of the actual construction costs for the facilities of the Project during the previous fiscal year. The report shall be furnished by December 1st following the conclusion of any fiscal year in which escrow funds were withdrawn by Interior. The report shall clearly identify the allocation of any and all disbursements from the Escrow Account, and shall disclose and allocate all payments made for construction of facilities of the Animas La Plata Project. Disbursement for the ensuing four quarters beginning on the succeeding January 1 shall be reduced by the amount, if any, that escrow disbursements in the preceding fiscal year as disclosed by the annual report exceeded __% of the actual construction costs expended for the Ridges Basin Dam, Durango Pumping Plant, Ridges Basin Inlet Conduit, and related facilities.

(B) The Escrow Agent shall, monthly and at other times as requested by the Authority or Interior, render to the Authority and Interior a statement showing the funds, whether in the form of cash or authorized investments, contained in the Escrow Account.

(C) The records prepared and maintained by Interior and the Escrow Agent pursuant to this Agreement shall be open to inspection and audit by representatives of the parties hereto at all times during regular business hours.

6. Stay of Disbursements. In the event that funds duly appropriated by Congress for construction of the Project are ordered impounded or their expenditure is enjoined by any federal executive or judicial action, order, decision, directive, or the functional equivalent thereof, the Authority shall have the right to direct the Escrow Agent to cease any and all disbursements from the Escrow Account. In such event, the Authority may, at its discretion, approve disbursements to Interior in any one fiscal year in an amount not to exceed __% of the construction costs for that fiscal year for the facilities of the Project, to the extent the disbursements from the fund have not previously been made for that work. If the Authority does not, within six months of ordering cessation of disbursements, deliver written notice to the Escrow Agent the disbursements may resume, then this Agreement shall terminate and the Escrow Agent shall return all escrowed funds, including interest thereon to the Authority.

If construction of facilities of the Project ceases for any reason beyond the reasonable control of the parties hereto, including without limitation failure by Congress to appropriate sufficient funds for construction in any fiscal year, the Authority shall have the right to direct the Escrow Agent to cease any and all disbursements from the Escrow Account or, at its discretion to approve disbursements under the same terms and conditions specified in the paragraph above. If the Authority does not, within six months of ordering cessation of disbursements deliver written notice to the Escrow Agent that disbursements may resume, then this Agreement shall terminate and the Escrow Agent shall return all escrowed funds, including interest thereon to the Authority.

7. Termination.

(A) In the event that any party to the Colorado Ute Indian Water Rights Final Settlement Agreement shall exercise its right to void that Final Agreement, as provided in Article VI, Section C thereof, the Authority shall have the right to terminate this Agreement. Similarly, if in accordance with the provisions of the Consent Decree entered by the District Court in and for Water Division No. 7 in Case No. W-1602-76, the Ute Mountain Ute or Southern Ute Indian Tribe commences litigation of its reserved rights claims from the Animas or La Plata rivers, the Authority shall have the right to terminate this Agreement. The right of the Authority shall be effective immediately upon the provision of notice by the voiding party under the Final Agreement, it being specifically agreed by the parties to this Agreement that this Agreement may be terminated prior to the running of the 60 day notice period provided for voiding the Final Agreement, or upon filing of a petition in the District Court to commence litigation of the reserved rights claims. In such event, the Authority may in its discretion elect to direct the Escrow Agent to cease any and all disbursements from the Escrow Account. Such election, if made, shall not diminish or otherwise affect the right of the Authority as provided elsewhere in this paragraph to terminate this Agreement. Upon notice of such termination by the Authority to the Escrow Agent, the remaining funds in the Escrow Account, including any interest or earnings thereon, shall promptly be paid to the Authority.

(B) This Agreement shall automatically terminate upon (1) the disbursement of sums sufficient to discharge in full the water capital obligation (including the payment in advance of the sum of _____ and any additional payment) required to secure the 2,600 acre-feet of average annual municipal and industrial depletion from the Animas La Plata Project allocated by the 2000 Amendments to the Animas La Plata Water Conservancy District; (2) the passage of eight years from the date of this Amendment; or (3) the exhaustion of the escrowed funds, whichever occurs first. Upon termination, the Escrow Agent shall promptly remit all remaining escrowed funds, if any, including interest and/or earnings, to the Authority.

(C) Except as otherwise provided herein, this Agreement shall remain in effect until the Escrow Agent shall receive notice of termination in writing from Interior and the Authority. Upon such termination, the Escrow Agent shall promptly pay the remaining escrowed funds, including interest and/or earnings, to the Authority.

8. Effect of Agreement. This Agreement amends and restates in its entirety, the Agreement and Instruction for Administering Escrow Account entered into by the parties on November 10, 1989, and supercedes and replaces that agreement in full.

9. No Interest. No member of or delegate to Congress, resident, commissioner or official of the Interior or the Authority shall benefit from this contract other than as a water user or land owner in the same manner as other water users or land owners.

UNITED STATES DEPARTMENT OF THE
INTERIOR

COLORADO WATER RESOURCES AND
POWER DEVELOPMENT AUTHORITY

By: _____
Regional Director,
Bureau of Reclamation

By: _____
Chairman

ATTESTATION:

By: _____
Secretary